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Attorneys for Plaintiff
MODDHA INTERACTIVE, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

MODDHA INTERACTIVE, INC.)	CIVIL NO. 12-00028 BMK
)	
Plaintiff,)	SECOND AMENDED COMPLAINT;
)	EXHIBITS “A” –“B”; CERTIFICATE
v.)	OF SERVICE
)	
PHILIPS ELECTRONICS NORTH)	
AMERICA, INC., and DOES 1-20,)	
inclusive,)	Trial Date: July 28, 2015
)	Judge: Honorable Barry M.
Defendants.)	Kurren

SECOND AMENDED COMPLAINT

Plaintiff MODDHA INTERACTIVE, INC. (“MODDHA”), by and through its undersigned attorneys, alleges and avers against Defendants PHILIPS ELECTRONICS NORTH AMERICA, INC. (“Philips”) and DOES 1-20, inclusive, (collectively, “Defendants”) as follows:

THE PARTIES

1. MODDHA is a corporation organized under the laws of Hawai‘i with its corporate headquarters in Kula, Hawai‘i.

2. MODDHA is the owner of record for each of the patents asserted herein and also owns all rights to the proprietary technologies and trade secrets the misappropriation of which by Defendants is sought to be redressed herein.

3. MODDHA is majority owned by Veronika Sandor, the CEO of MODDHA, and Edward Michael Porrazzo (“Porrazzo”), CTO and co-inventor of the asserted patents.

4. MODDHA is informed and believes, and on that basis alleges, that Philips is a corporation organized under the laws of Delaware with its principal place of business at Andover, Massachusetts, and is the corporate parent of the entities that manufactured, used, sold, imported, and/or offered for sale the products that are at issue in this case.

5. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants Does 1 through 20, inclusive, are unknown to MODDHA, which therefore sues said Defendants by such fictitious names. MODDHA is informed and believes, and thereby alleges, that each of the Defendants designated herein as a fictitiously named Defendant is in some manner responsible for the events and happenings herein referred to and caused the damage to the MODDHA as herein alleged. When MODDHA ascertains the true names and capacities of Does 1 through 20, inclusive, it will ask leave of this Court to amend its Complaint by setting forth the same.

JURISDICTION AND VENUE

6. This action includes claims for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* These claims arise under federal law and this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), 2201(a) and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

7. Alternatively, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) inasmuch as the citizenship of MODDHA and Philips is diverse and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

8. Upon information and belief, MODDHA alleges that this Court has personal jurisdiction over the parties because Defendants have transacted and are transacting business, and have solicited and are regularly soliciting business, in Hawai‘i and specifically in this District, and have thus purposefully availed themselves to the jurisdiction of this District.

9. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claim occurred in this District. Upon information and belief, MODDHA alleges that Defendants have committed acts of infringement throughout the United States, including Hawai‘i and specifically in this District.

10. Venue is also proper in this District under 28 U.S.C. § 1391(c) and 28 U.S.C. § 1400(b) because Defendants’ contacts with this District are sufficient to render Defendants amenable to personal jurisdiction in this District. Upon information and belief, MODDHA alleges that Defendants’ contacts with this judicial district include without limitation (1) advertising and offering for sale the speakers in Hawai‘i and specifically in this District; and (2) transacting business and soliciting business in Hawai‘i and specifically in this District.

FACTUAL BACKGROUND

11. MODDHA is the owner of certain proprietary technologies, patents, and proprietary information relating generally to the science of Quantum

Transduction (“MODDHA QT Technology”) developed by MODDHA and its predecessors entities, all of which predecessor entities have been held in significant part by or were controlled by Porrazzo. MODDHA is also the current holder of all of the rights of such predecessor entities to pursue the contract claims and other rights asserted herein.

12. The MODDHA QT Technology includes, but is not limited to, United States Patent No. 5,430,805 (“‘805 Patent”) for inventions entitled “Planar Electromagnetic Transducer,” and United States Patent No. 5,953,438 (“‘438 Patent”) also for inventions entitled “Planar Electromagnetic Transducer.”

13. In early 2001, in addition to ‘805 Patent and the ‘438 Patent for the Planar Electromagnetic Transducer (“PET”), the MODDHA QT Technology, which was then owned by Porrazzo Strategic Technologies (“PST”), also included extensive confidential information and trade secrets developed by Porrazzo on behalf of MODDHA and its predecessor entities regarding the following applications and devices:

- a. Variable Geometry Electromagnetic Transducers (“VGET”);
- b. Multiple Input and Output Transducers (“MIT”);
- c. Configurable Planar Antenna Systems (“CPAS”);
- d. Porrazzo “Airstick” and Ultrasonic Sensors;
- e. Parallel Digital Transmission Technologies (“PDT2”).

14. In 2001 and thereafter, PST was actively soliciting business relationships with several manufacturers and distributors of electronic devices who might be interested in commercializing the manufacture and sale of devices utilizing the MODDHA QT Technology, including Philips.

15. PST's discussions with Philips commenced in approximately January of 2001 and led to the negotiation and execution on or about March 2, 2001 of a Mutual Non-Disclosure Agreement between Philips and PST ("NDA") pursuant to which PST provided samples and other confidential information regarding the MODDHA QT Technology to Philips for Philips' evaluation. The NDA further provided that all confidential information provided or disclosed under the NDA would remain the property of PST, would not be used or disclosed by Philips, and would be either returned or destroyed upon termination of the NDA.

16. On or about June 22, 2001, PST and Philips executed a Memorandum of Understanding ("MOU") to establish a framework for discussion regarding potential areas of business cooperation between PST and Philips regarding the MODDHA QT Technology. Both the NDA and the MOU made explicit reference to the technologies, devices and applications set forth in paragraph 13 of this Second Amended Complaint. The MOU further set forth a target schedule for delivery of samples, the provision of written descriptions and explanations of the employed technologies, site visits at the respective offices of PST and Philips, etc.

17. In accordance with the NDA and the MOU, on or about July 2, 2001, PST supplied samples to Philips' lab in Belgium and to its office in Sunnyvale, California of the following items which utilize the MODDHA QT Technology:

- a. Porrazzo automotive speakers;
- b. Multi-Media Computer-Type speakers;
- c. Home Theatre Speakers;
- d. Representative Automotive Speakers in various sizes and shapes;
- e. Cell phone antenna,
- f. Airstick Controller – functioning as a loudspeaker, Touch Screen and off the surface 3D AirTouch Control – multifunction transducer.

18. During this time frame, in mid-2001, Philips engineers and sales and marketing teams visited PST offices and PST's Director of Engineering and technology team walked Philips' representatives through all of the proprietary manufacturing know how and trade secrets pertaining to these products. For example, with specific reference to the sample speakers supplied to Philips, PST transferred to Philips confidential and proprietary information pertaining to :

- a. Diaphragm tension;
- b. Diaphragm materials selection;

- c. Pixel/Conductors selection;
- d. Pixel Conductors placement;
- e. Shape and Size/Ratio of the Diaphragm (improper size/ratio create destructive interferences);
- f. Low impedance selection (reduces power requirements of amplifier and ensures lower distortion);
- g. Magnetic Materials Selection;
- h. Magnetic orientation and placement relative to Pixel/Conductors;
- i. Selection of the proper materials for the Holding Frame (avoiding distortions and harmful resonances);
- j. Compliance of the Diaphragm (a lighter diaphragm is desirable, but it must be properly insulated);
- k. Diaphragm capture - (how the diaphragm is held in place (edge and corner effects cause harmful distortions and interferences);
- l. Non-Ferrous Frame so that the most concentrated TESLA Gauss magnetic energies are directed with precision to the Pixel/Conductors (Philips had a Metal (Ferrous) frame previously).

19. Following the deliveries of samples, disclosures and visits, Philips represented that it was interested in pursuing a business relationship with PST, and a number of different alternative structures were discussed. However, following the September 11, 2001 attack on the World Trade Center, Philips advised PST that global economic conditions precluded Philips from being able to justify investing in the MODDHA QT Technology until conditions improved. This was orally communicated by Philips' officer Willem Bulthuis ("Bulthuis") directly to Porrazzo sometime in 2002.

20. In 2002 or 2003, Porrazzo asked Bulthuis to have Philips return the samples and other confidential materials that had been provided by PST. Bulthuis responded that, to leave open the possibility of resuming the relationship, PST should allow Philips to retain them. Porrazzo reasonably relied on Bulthuis' representation that there was a possibility that Philips would resume a relationship with PST and did not further pursue the return or destruction of the samples and other confidential materials.

21. Following the cessation of active negotiations with Philips in early 2002, PST and the other predecessor entities of MODDHA (all of which are hereafter referred to as "MODDHA") reasonably believed that Philips would not pursue the development, manufacture and sale of any consumer electronic products

utilizing the MODDHA QT Technology without the knowledge and consent of PST.

22. It was not until the summer of 2008 that it first came to the attention of Porrazzo that Philips was marketing and selling a home theater system being sold through Costco Wholesale which utilized loudspeakers with components, described by Philips as “Neodymium Ribbon Tweeters,” that appeared to be designed and manufactured in accordance with the PET technology PST had shared with Philips in 2001.

23. This prompted MODDHA to investigate whether its patents had been infringed and, after engagement of patent counsel, to conclude, in late 2010 and beginning of 2011, that infringement had occurred. On or about June 13, 2011, MODDHA contacted Philips to give written notice of and demand an explanation of this apparent infringement by Philips of the ‘805 Patent and the ‘438 Patent.

24. In response to MODDHA’s inquiries, Philips denied that it had used any confidential information obtained from MODDHA or that it had played any role in the design or manufacture of the infringing Neodymium Ribbon Tweeters contained in Philips brand sound systems. Philips claimed that these components had simply been purchased by Philips from third parties over whom Philips had no control who had independently designed and manufactured them.

25. Philips' denial that it had used any of the confidential information obtained from MODDHA in 2001, or that it had played any role in the design or manufacture of the Neodymium Ribbon Tweeters used in Philips brand sound systems, continued even after the January 13, 2012 filing of MODDHA's Complaint for infringement of the '805 Patent and the '438 Patent. For example, Philips verified under oath on May 17, 2012 in its Responses to Plaintiff's First Request For Answers to Interrogatories that, "the tweeters included in the HTS 9800 were manufactured by Eastech Electronics, Inc. ("Eastech") located at 13F, NO. 99, Sec. 1, Nankan road, Luchu Shiang, Taoyuan, Hsien, Taiwan, R.O.C."

26. In February in 2013, upon learning through the news media of litigation between Funai Electronics of Japan and Philips, with which Philips has had a longstanding manufacturing relationship of more than twenty five years, MODDHA began to research publicly available information regarding Philips' marketing, sales volumes and manufacturing relationships for its loudspeaker systems. This research disclosed a number of infringing loudspeaker systems that Philips has not admitted to in discovery herein. MODDHA was also prompted to further investigate Philips' contentions that it did not design or manufacture, nor did it take delivery of, or sell directly, any Philips branded products manufactured by Eastech.

27. Subsequent research by MODDHA has led to the discovery of facts not previously known by MODDHA that provide strong circumstantial evidence that, following Philips' 2001 receipt of the confidential information from PST regarding its MODDHA QT Technology, Philips shared that proprietary manufacturing technical know-how and trade secret information in some manner, shape or form with Eastech so as to enable Eastech to produce for Phillips multiple consumer electronic products that employed what Philips had described as Neodymium Ribbon Tweeters which were imported and sold under the Philips brand from at least 2003 through 2008.

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 5,430,805)

28. MODDHA hereby incorporates by reference paragraphs 1 through 27, above, as though set forth herein in their entirety.

29. On July 4, 1995, United States Patent No. 5,430,805 (the '805 Patent) was duly and legally issued for inventions entitled "Planar Electromagnetic Transducer."

30. MODDHA holds all rights and interest in the '805 Patent. A true and correct copy of the patent is attached hereto as Exhibit A.

31. Upon information and belief, Defendants have infringed, literally and/or under the doctrine of equivalents, the '805 Patent.

32. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of the HTS 9800 and components thereof, active inducement of others to manufacture, use, sell, import, and/or offer for sale the HTS 9800 and components thereof, and contributing to the manufacture, use, sale, importation, and/or offer for sale of the HTS 9800 and components thereof.

33. Upon information and belief, Defendants manufactured, used, sold, imported, and/or offered for sale, actively induced others to manufacture, use, sell, import and/or offer for sale, or contributed to the manufacture, use, sale, importation, and/or offer for sale of other products that incorporate a neodymium ribbon tweeter similar to that incorporated in the HTS 9800 including but not limited to the following:

Philips Cineos DVD/SACD Home Theater System HTS9800W

Philips Matchline DVD Home Theater System MX5900SA

Philips DVD Home Theater System LX8320SA

Philips Digital AV Receiver System LX700

Philips Matchline DVD/SACD Home Theater System MX5800SA

Philips DVD/SACD Home Theater System LX8200SA

Philips DVD Component Hi-Fi System MCD909

Philips DVD/SACD Home Theater System LX8300SA

Philips DVD/SACD Home Theater System LX8500W

Philips Classic Micro Hi-Fi System MCM761

Philips DVD Micro Theater MCD908

Philips DVD Micro Theater MCD759

Philips DVD Micro Theater MCD759D

Philips Micro Hi-Fi System MCM760

Philips DVD Mini Sys MCM702

Philips MCD 708 Mini System

Philips DVD Micro Theater MCD139B

Philips Streamium Wireless Music Centre WAC3500D

Philips 80GB Wireless Music Center WAC 7000

Philips Micro Hi-Fi System MCB 700

Philips MCM 398 D 05 CD/MP3 USB Micro Hi-Fi System

Philips MCM 204/05 & MCB 204 MP3/WMA Micro Hi-Fi Systems

Philips MCM 119 System

Philips MCM 393 MP3/USB mini stereo system

Philips MCM 8 Home Audio System

Philips MCM700 USB CD/MP3 Mini HiFi System

Philips LX 8000

Philips LX 9000

Philips DVD Micro Theater MCD109

Philips LX 7000S

Philips DVD Micro Theater MCD119

Philips DVD Music Hi-Fi MCD 129

Philips DVD Micro Theater MCD139

Philips DVD Micro Theater MCD139B

Philips DVD Micro Theater MCD149B

Philips DVD Micro Theater MCD296

Philips DVD Micro Theater MCD700

Philips DVD Mini Sys MCD703

Philips DVD Mini Sys MCD705

Philips DVD Mini Sys MCD706

Philips DVD Micro Theater MCD708

Philips DVD Micro Theater MCD709

Philips DVD Micro Theater MCD710

Philips DVD Micro Theater MCD713

Philips DVD Micro Theater MCD718

Philips DVD Micro Theater MCM 11

Philips DVD Micro Theater MCD755

34. Upon information and belief, the manufacture, use, sale, importation, and/or offer for sale of each of the foregoing products and components thereof, active inducement of others to manufacture, use, sell, import, and/or offer for sale the foregoing products and components thereof, and contributing to the manufacture, use, sale, importation, and/or offer for sale of the foregoing products and components thereof, are infringing acts.

35. Defendants are liable for infringement of the '805 Patent pursuant to 35 U.S.C. § 271.

36. Defendants' acts of infringement have caused damage to MODDHA and MODDHA is, therefore, entitled to recover from Defendants the damages sustained by MODDHA as a result of Defendants' wrongful acts in an amount subject to proof at trial.

37. Upon information and belief, Defendants had knowledge of their infringement of the '805 Patent, yet Defendants infringed said patent. Defendants' infringement of the '805 Patent was willful and deliberate, entitling MODDHA to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 5,953,438)

38. MODDHA hereby incorporates by reference paragraphs 1 through 37, above, as though set forth herein in their entirety.

39. On September 14, 1999, United States Patent No. 5,953,438 (the ‘438 Patent) was duly and legally issued for inventions entitled “Planar Electromagnetic Transducer.”

40. MODDHA holds all rights and interest in the ‘438 Patent. A true and correct copy of the ‘438 Patent is attached hereto as Exhibit B.

41. Upon information and belief, Defendants have infringed, literally and/or under the doctrine of equivalents, the ‘438 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of the HTS 9800 and components thereof, active inducement of others to manufacture, use, sell, import, and/or offer for sale the HTS 9800 and components thereof, and contributing to the manufacture, use, sale, importation, and/or offer for sale of the HTS 9800 and components thereof.

42. Upon information and belief, Defendants manufactured, used, sold, imported, and/or offered for sale, actively induced others to manufacture, use, sell, import and/or offer for sale, or contributed to the manufacture, use, sale, importation, and/or offer for sale of other products that incorporate a neodymium ribbon tweeter similar to that incorporated in the HTS 9800.

43. Upon information and belief, the manufacture, use, sale, importation, and/or offer for sale of each of the foregoing products and components thereof, active inducement of others to manufacture, use, sell, import, and/or offer for sale

the foregoing products and components thereof, and contributing to the manufacture, use, sale, importation, and/or offer for sale of the foregoing products and components thereof, are infringing acts.

44. Defendants are liable for infringement of the '438 Patent pursuant to 35 U.S.C. § 271.

45. Defendants' acts of infringement have caused damage to MODDHA and MODDHA is entitled to recover from Defendants the damages sustained by MODDHA as a result of Defendants' wrongful acts in an amount subject to proof at trial.

46. Upon information and belief, Defendants had knowledge of their infringement of the '438 Patent, yet Defendants continued to infringe said patent. Defendants' infringement of the '438 Patent was willful and deliberate, entitling MODDHA to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT III
(BREACH OF CONTRACT)

47. MODDHA hereby incorporates by reference paragraphs 1 through 46, above, as though set forth herein in their entirety.

48. Beginning at least as early as 2002, and continuously thereafter, Philips breached the express and implied terms and conditions of the NDA and the MOU by using the confidential information supplied by PST and by disclosing

such confidential information to at least one third party, Eastech. These provisions include but are not limited to numbered paragraphs 2, 4, 5, 9 and 16 of the NDA and 7 of the MOU.

49. Philips has been unjustly enriched as a consequence of its breaches of the NDA and the MOU in the form of profits and goodwill generated from Philips' use of the MODDHA QT Technology, in collaboration with its business partner, Eastech, to develop, market, and distribute, under Philips' brand identity, a multitude of consumer electronic products including, but not limited to, an extensive line of home theater systems utilizing speakers that rely upon "neodymium ribbon tweeters" which Philips acquired the technology and knowhow to design, manufacture and produce from PST pursuant to the terms of the NDA and the MOU.

50. MODDHA has performed all of its covenants, conditions, promises and obligations under the NDA and the MOU except for those obligations which it was prevented or excused from performing.

51. As a direct and proximate result of Philips' breaches of the NDA and the MOU, MODDHA has been damaged by the loss of its fair share of the revenues generated from Philips' commercialization of the MODDHA QT Technology to which MODDHA was justly entitled by reason of its ownership thereof.

52. Accordingly, MODDHA is entitled to a judgment against Philips for damages and for restitution in an amount to be established at trial.

COUNT IV
(FRAUD)

53. MODDHA hereby incorporates by reference paragraphs 1 through 52, above, as though set forth herein in their entirety.

54. Beginning in early 2001, in order to induce MODDHA to give Philips access to samples and confidential information pertaining to the MODDHA QT Technology, Philips made false representations to MODDHA regarding its intentions with respect to its evaluation and use of such MODDHA QT Technology.

55. Philips also failed to disclose its true intentions under circumstances where Philips' relationship with MODDHA gave rise to a duty on the part of Philips to do so, including the steps that Philips was planning and implementing, in concert with its business partner, Eastech, to commercially exploit the MODDHA QT Technology without obtaining the consent of and appropriately compensating MODDHA for the right to do so.

56. These false representations and failures to disclose include, but are not limited to, the following:

- a. Philips represented that it intended to enter into a 50/50 Joint Venture with PST; that Philips would put up its manufacturing

capabilities in return for PST's technical expertise in recognition of the fact that, at that time, Philips had severe limitations with its current loudspeaker and consumer product lines which Philips admitted could be overcome using the MODDHA QT Technology.

- b. Philips represented that it intended to invest twenty million dollars in the equity of PST.
- c. Philips represented that it intended to manufacture Porrazzo loudspeakers for Chrysler and the Airstick for Microsoft among others and that in all instances, for all customers, PST and Philips would revenue share on a fifty-fifty basis.
- d. Philips represented that MODDHA QT Technology would allow Philips to reduce the size of its amplifiers, increase Philips' ability to maintain high quality control, and reduce warranty and repair issues they were having; that Philips would be able to reduce the size or even eliminate the need for conventional speaker boxes, and thus reduce container sizes, shipping weight and inventory space, thus alone significantly increase profit margins; that Philips' vision was that the MODDHA QT Technology represented a holistic solution that

would significantly add value to Philips' shareholders and had implications well beyond just the speakers but into wireless applications, touchscreens and many other uses where Philips embodied transducers.

- e. Philips represented that, after the tragedies of September 11th, 2001, Philips was going to put the Porrazzo-Philips projects on hold; that Philips was still investigating the actual ability to manufacture and properly integrate for commercialization the MODDHA QT Technology into products.
- f. Philips failed to disclose, however, that it actually had no intention of entering into any business relationship with PST; that while its interest in acquiring the significant benefits of the MODDHA QT Technology was real, that it had no intention of investing in PST or compensating PST for its intended use of the MODDHA QT Technology; that by 2002 it was already sharing the MODDHA QT Technology with its longstanding business partner, Eastech, and arranging for Eastech to utilize the MODDHA QT Technology to mass manufacture speakers under the Philips brand name for distribution in the United States and elsewhere.

57. MODDHA reasonably relied upon the foregoing fraudulent misrepresentations and failures to disclose by executing the NDA and the MOU and providing and allowing Philips to retain samples and confidential information in the belief that Philips had a good faith intention to evaluate such samples and information and either cooperate with MODDHA in the formation of a business relationship with MODDHA or truthfully advise MODDHA if it had elected not to do so, in which case Philips would honor the confidentiality terms of the NDA and MOU, including the destruction or return of the samples and documents supplied to Philips by MODDHA.

58. Philips has been unjustly enriched as a consequence of the foregoing misrepresentations and failures to disclose by Philips in the form of profits and goodwill generated from Philips' use of the MODDHA QT Technology, in collaboration with its business partner, Eastech, to develop, market, and distribute, under Philips' brand identity, a multitude of consumer electronic products including, but not limited to, an extensive line of home theater systems utilizing speakers that rely upon "neodymium ribbon tweeters" which Philips acquired the technology and knowhow to design, manufacture and produce from PST pursuant to the terms of the NDA and the MOU.

59. MODDHA has been damaged as a result of Philips' foregoing misrepresentations and failures to disclose by the loss of its fair share of the

revenues generated from Philips' commercialization of the MODDHA QT Technology to which MODDHA was justly entitled by reason of its ownership thereof.

60. The foregoing fraudulent conduct by Philips was engaged in willfully, wantonly, and with a reckless disregard for the consequences it would have on MODDHA so as to warrant the imposition of an award of punitive or exemplary damages against Philips in an amount sufficient to deter Philips from engaging in such commercially reprehensible behavior in the future.

61. Accordingly, MODDHA is entitled to a judgment against Philips for damages, restitution and punitive damages in an amount to be established at trial.

COUNT V
(MISAPPROPRIATION OF TRADE SECRETS)

62. MODDHA hereby incorporates by reference paragraphs 1 through 61, above, as though set forth herein in their entirety.

63. Despite acknowledging in the NDA and the MOU the confidentiality of MODDHA's confidential information and MODDHA's exclusive ownership over such confidential information, Philips, in concert with its business partner, Eastech, has used MODDHA's trade secrets in the design and operation of numerous consumer electronic products, as set forth in the preceding paragraphs of this Second Amended Complaint.

64. Philips knew that its use of MODDHA's trade secrets in this manner was improper, and in direct violation of its contractual obligations to MODDHA.

65. MODDHA's protected trade secrets include, without limitation, the proprietary manufacturing know how and trade secrets pertaining to the sample speakers supplied to Philips, including information pertaining to:

- a. Diaphragm tension;
- b. Diaphragm materials selection;
- c. Pixel/Conductors selection;
- d. Pixel Conductors placement;
- e. Shape and Size/Ratio of the Diaphragm (improper size/ratio create destructive interferences);
- f. Low impedance selection (reduces power requirements of amplifier and ensures lower distortion);
- g. Magnetic Materials Selection;
- h. Magnetic orientation and placement relative to Pixel/Conductors;
- i. Selection of the proper materials for the Holding Frame (avoiding distortions and harmful resonances);
- j. Compliance of the Diaphragm (a lighter diaphragm is desirable, but it must be properly insulated);

- k. Diaphragm capture - (how the diaphragm is held in place (edge and corner effects cause harmful distortions and interferences); and
- l. Non-Ferrous Frame so that the most concentrated TESLA Gauss magnetic energies are directed with precision to the Pixel/Conductors (Philips had a Metal (Ferrous) frame previously).

66. These trade secrets have independent economic value not only to MODDHA, but to any existing or potential competitor of MODDHA that does not already lawfully possess such information.

67. MODDHA has taken extensive measures to protect its trade secrets including, without limitation, requiring all potential business partners, such as Philips, to sign non-disclosure agreements before such trade secrets are disclosed.

68. As a direct and proximate result of its misappropriation of these trade secrets, Philips was able to develop a commercially viable line of consumer electronic products, as set forth in the previous allegations of this Second Amended Complaint.

69. The conduct of Philips in wrongfully misappropriating the trade secrets of MODDHA was in violation of applicable state common law and statutory law, including but not limited to Haw. Rev. Stat. Chapter 482.

70. As a direct and proximate result of Philips' misappropriation of trade secrets, MODDHA has been damaged, and Philips has wrongfully benefited by an amount to be proven at trial.

71. In misappropriating MODDHA's trade secrets, Philips has acted in a willful and malicious manner entitling MODDHA to exemplary damages equal to twice the amount of damages proven at trial.

COUNT VI
(UNFAIR COMPETITION)

72. MODDHA hereby incorporates by reference paragraphs 1 through 71, above, as though set forth herein in their entirety.

73. Philips' acts and omissions alleged above constitute unfair competition under the common law and applicable state statutory law, including but not limited to Chapter 480 of the Hawaii Revised Statutes.

74. MODDHA has been injured by Philips' unfair method of competition and is therefore entitled to the remedies provided by law, including without limitation, Haw. Rev. Stat. § 480-13, including damages, treble damages, injunctive relief and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, MODDHA requests entry of judgment in its favor and against Defendants as follows:

A. Declaring that Defendants have infringed one or more claims of U.S. Patent Nos. 5,430,805 and 5,953,438;

B. Awarding the damages arising out of Defendants' infringement of U.S. Patent Nos. 5,430,805 and 5,953,438, including enhanced damages pursuant to 35 U.S.C. § 284, to MODDHA, together with prejudgment and post-judgment interest, in an amount according to proof;

C. Awarding MODDHA compensatory and exemplary damages, in an amount to be proven at trial, for all injuries suffered by MODDHA as a result Philips' breach of contract, fraud, misappropriation of trade secrets, and unfair competition;

D. Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

E. For such other costs and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawaii, November 21, 2014.

/s/ Randall K. Schmitt

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